IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.904 OF 2006

In

NOTICE OF MOTION NO.3652 OF 2005

In

SUIT NO.1304 OF 1986

Tirupati (Mahalaxmi) Co-operative Housing Society Ltd. : Appellant (Orig.Plaintiff)

V/s.

M/s.Gowani Builders (Private) Limited & Ors. : Respondents

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Mr.D.V.Merchant, senior counsel, with Mr.P.P.Paul and Mr.Nimish Kothore i/b. M/s.Nanu Hormasjee & Co., for the appellant.

Mr.Parimal Shroff with Mr.Subodh Joshi i/b. M/s.P.K.Shroff & Co., for respondent no.1.

Mr.M.D.Siodia with Ms D.S.Retiwala for respondent no.28.

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**CORAM : R.M.LODHA & S.A.BOBDE,JJ.**

DATE : DECEMBER 19, 2006.

**P.C**.

1. We heard Mr.D.V. Merchant, senior counsel, for the appellant, Mr.Parimal Shroff, the counsel for the respondent no.1, and Mr.M.D.Siodia, the counsel for the

respondent no.28.

2. Having heard the senior counsel and the counsel for the parties, we are of the view that the prayers made in the Notice of Motion are wholly misconceived. It is not in dispute that the respondent no.28 is not a party to the suit. It is also not in dispute that there is no privity of contract between the plaintiff and the respondent no.28. The plaintiff's right, if any, shall only be ripened under the agreement if the conveyance is executed in their favour after the suit for specific performance is decreed. Rejection of the prayers made in the Notice of Motion by the Motion Judge cannot be faulted.

3. Appeal is dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.